

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

1 IN THE MATTER OF )  
2 MAYR BROTHERS LOGGING )  
3 COMPANY, INC., )  
4 )  
5 Appellant, )  
6 vs. )  
7 )  
8 OLYMPIC AIR POLLUTION )  
9 CONTROL AUTHORITY, )  
10 )  
11 Respondent. )  
12 )  
13 )  
14 )  
15 )  
16 )  
17 )  
18 )

PCHB No. 444

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

8 THIS MATTER being an appeal of two civil penalties; having come on  
9 regularly for hearing before the Pollution Control Hearings Board on  
10 the 11th day of January, 1974, at Lacey, Washington; and appellant Mayr  
11 Brothers Logging Company, Inc. appearing through one of its employees,  
12 Joe R. Ness and respondent Olympic Air Pollution Control Authority  
13 appearing through its attorney, Fred Gentry; and Board members present  
14 at the hearing being W. A. Gissberg (presiding) and Mary Ellen McCaffree;  
15 and the Board having considered the sworn testimony, exhibits, post-hearing  
16 brief of respondent, records and files herein and having entered on the  
17 21st day of March, 1974, its proposed Findings of Fact, Conclusions of Law  
18 and Order, and the Board having served said proposed Findings, Conclusions

1 and Order upon all parties herein by certified mail, return receipt  
2 requested and twenty days having elapsed from said service; and

3 The Board having received no exceptions to said proposed Findings,  
4 Conclusions and Order; and the Board being fully advised in the premises;  
5 now therefore,

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed  
7 Findings of Fact, Conclusions of Law and Order, dated the 21st day of  
8 March, 1974, and incorporated by this reference herein and attached  
9 hereto as Exhibit A, are adopted and hereby entered as the Board's  
10 Final Findings of Fact, Conclusions of Law and Order herein.

11 DONE at Lacey, Washington, this 16<sup>th</sup> day of April, 1974.

12 POLLUTION CONTROL HEARINGS BOARD

13   
14 W. A. GISSBERG, Member

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17 MARY ELLEN McCAFFREE, Member

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26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW  
AND ORDER

1                                   BEFORE THE  
2                                   POLLUTION CONTROL HEARINGS BOARD  
                                  STATE OF WASHINGTON

3 IN THE MATTER OF                   )  
4 MAYR BROTHERS LOGGING            )  
5 COMPANY, INC.,                    )

6                   Appellant,        )

7                   vs.                )

8 OLYMPIC AIR POLLUTION            )  
9 CONTROL AUTHORITY,                )

                  Respondent.        )

PCHB No. 444

FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

10       An informal hearing on appellant's appeal to the imposition  
11 of two civil penalties upon it was heard on January 11, 1974 at  
12 Lacey, Washington before Board members W. A. Gissberg (presiding)  
13 and Mary Ellen McCaffree. Appellant appeared by and through one of  
14 its employees, Joe R. Ness and respondent appeared by and through its  
15 attorney, Fred Gentry.

16       Having considered the testimony, the exhibits, and post-hearing  
17 brief of respondent, and being fully advised, the Board makes and  
18 enters the following

EXHIBIT A

1 FINDINGS OF FACT

2 I.

3 Appellant is the owner of, and conducts its logging business  
4 on, a 30-acre tract of land near Hoquiam, Grays Harbor County.  
5 Highway 101, a paved roadway, abuts appellant's property on the  
6 west; to the east and south is a river bordered by unimproved land  
7 overgrown with trees and vegetation. Appellant's property is used  
8 extensively for log storage. Heavy equipment and trucks regularly  
9 traversed the two dirt access roads and the open, yard areas of  
10 appellant's property were, at all material times hereinafter  
11 mentioned, untreated for dust control.

12 II.

13 On August 7, 1973, respondent's employee, responding to a citizen  
14 complaint of dust, observed a large "semi" truck owned by appellant  
15 and loaded with wood chips and fine sawdust leave appellant's yard  
16 and proceed on Highway 101 toward Hoquiam. The wood waste material  
17 was piled higher than the open container on the truck. Although  
18 the truck was equipped with screens designed to prevent material  
19 from escaping, they were not in use. As the vehicle travelled along  
20 the highway, sawdust and chips were seen falling from the truck onto  
21 the public roadway, thus contributing to the general dust problem  
22 along the road. The fine sawdust was capable of becoming windblown.

23 III.

24 As a result of the above observation, respondent issued its  
25 Notice of Violation 617 citing a violation of its Section 12.05(a)  
26 of Regulation I. Thereafter, a civil penalty of \$25.00 was

27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

1 imposed. This appeal followed.

2 IV.

3 Section 12.05 of respondent's Regulation I provides:

4 "No person shall cause or allow the emission of  
5 particulate matter from a motor vehicle of such  
6 size and nature as to be visible in sufficient  
7 number to cause annoyance to any other person.  
8 This restriction shall apply only if such particulate  
9 matter falls on real or personal property other  
10 than that of the person responsible for the  
11 emission. This applies to the following:

12 (a) When handling, transporting or storing  
13 particulate material. . . .

14 For the purpose of this subsection, fugitive  
15 particulate means particulate material which is  
16 being emitted to the open air from points other  
17 than an opening designed for emissions such as a  
18 smokestack, vent or exhaust pipe."

19 V.

20 Proceeding again to appellant's business site on August 7,  
21 1973, respondent's employee observed dust created by the activity  
22 on appellant's property descend upon his vehicle which was then  
23 parked on property adjacent to appellants. Notice of Violation  
24 Number 618 was issued by respondent, followed by a civil penalty  
25 in the amount of \$50.00, citing a violation of the rules and  
26 regulations of the Department of Ecology, which provide as follow:

27 WAC 18.04.040(8)(c). "Fugitive particulate  
28 material. Reasonable precautions shall be  
29 taken to prevent fugitive particulate material  
30 from becoming airborne. . .

31 (c) From an untreated open area. . . "

32 WAC 18.04.040(2). "Preventing particulate matter  
33 from becoming deposited. No person shall cause or  
34 permit the emission of particulate matter from any  
35 source which becomes deposited beyond the property

36 FINDINGS OF FACT,  
37 CONCLUSIONS OF LAW  
38 AND ORDER

1 under direct control of the owner or operator of  
2 the source in sufficient quantity to interfere  
3 unreasonably with the use and enjoyment of the  
4 property upon which the material was deposited. . . "

5 VI.

6 Hearsay evidence was given by respondent, without objection  
7 of appellant, that the dust which settled onto a complaining  
8 neighbor's property was of such a volume as to cause her to have  
9 "difficulty breathing" and the death of flowers in her yard.

10 VII.

11 Since the date of the alleged dust violation, appellant has  
12 "blacktopped" its two main access roads and much of its other  
13 internal roadway areas and purchased a second watering truck for  
14 controlling dust, all at an expenditure of \$174,500.00.

15 From which comes the following

16 CONCLUSIONS OF LAW

17 I.

18 Appellant violated Section 12.05(a) of respondent's Regulation  
19 I and the civil penalty of \$25.00 for Notice of Violation Number 617  
20 was reasonable.

21 II.

22 Appellant violated WAC 18.04.040(8)(c), but did not violate  
23 WAC 18.04.040(2). We have disregarded the hearsay evidence which  
24 purported to show that the dust from appellant's property was of  
25 sufficient quantity to interfere unreasonably with the use and  
26 enjoyment of another's property.

27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

1 III.

2 Does respondent have the authority to enforce a regulation lawfully  
3 promulgated by the Department of Ecology under the Clean Air Act  
4 by the imposition of a civil penalty? Respondent contends that it  
5 does and relies upon RCW 70.94.170 and 70.94.431. Our own research  
6 convinces us that the question must be answered in the affirmative  
7 by virtue of the provisions of RCW 70.94.211 and particularly  
8 RCW 70.94.331(6) and (7), which in pertinent part provide:

9 "(6) The state board shall enforce the air  
10 quality standards and emission standards  
11 throughout the state except where a local  
12 authority is enforcing the state regulations  
or its own regulations which are more stringent  
than those of the state.

13 "(7) The state board shall encourage local  
14 units of government to handle air pollution  
problems within their respective jurisdictions;  
..."

15 IV.

16 This Board believes that the large financial expenditure made  
17 by appellant to reduce or control the dust emitting from its property  
18 warrants the conditional suspension of the \$50.00 civil penalty imposed  
19 by respondent for its Notice of Violation 618.

20 From which follows this

21 ORDER

22 1. The Notice of Civil Penalty of \$25.00 for Notice of  
23 Violation 617 is sustained.

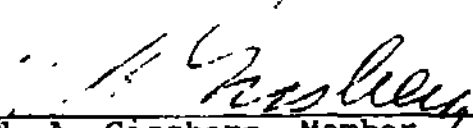
24 2. The Notice of Civil Penalty of \$50.00 for Notice of Violation  
25 618 is sustained, but it is suspended if appellant does not  
26 violate WAC 18-04-040(8)(c) or 18-04-040(2) within nine months

27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER

1 from the date of this order.

2 DONE at Lacey, Washington, this 21<sup>st</sup> day of March, 1974.

3 POLLUTION CONTROL HEARINGS BOARD

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5   
6 W. A. Gissberg, Member

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9 MARY ELLEN McCAFFREE, Member

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